

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ANDREY GONCHAROV,

Petitioner,

v.

BUREAU OF IMMIGRATION &
CUSTOMS ENFORCEMENT,

Respondent.

CIVIL ACTION NO. 3:05-CV-516

(JUDGE CAPUTO)

MEMORANDUM ORDER

Presently before the Court is Petitioner Andrey Goncharov's Motion For Emergency Stay of Deportation (Doc. 1), which the Court previously construed as a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241, and a motion for an emergency stay of removal (See Doc. 2). Petitioner subsequently filed an amendment to his petition in which he requested that the Court reverse the decision of the Board of Immigration Appeals ("BIA"), which affirmed the Immigration Judge's final order of removal. (Doc. 12.)

Where a criminal alien files a petition for writ of habeas corpus challenging a final order of removal, the scope of the Court's review is limited to constitutional issues and errors of law. *Auguste v. Ridge*, 395 F.3d 123, 138 (3d Cir. 2005). Neither factual determinations rendered at the administrative level nor denials of discretionary relief fall with the Court's scope of review. *Id.*; see also *Bakhtriger v. Elwood*, 360 F.3d 414, 425 (3d Cir. 2004) ("In the wake of [*INS v. St. Cyr*, 533 U.S. 289 (2001)] we are not aware of any cases that have upheld habeas review of factual findings or discretionary determinations in criminal alien removal cases."). In the instant matter, Petitioner has

failed to demonstrate any constitutional or other legal error. Therefore, the petition will be denied.

NOW, this 28th day of April, 2005, **IT IS HEREBY ORDERED** that:

- (1) The petition for writ of habeas corpus is **DENIED**.
- (2) The stay issued March 14, 2005, is **LIFTED**.
- (3) The Clerk of the Court shall mark this case **CLOSED**.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge